

Statutory Provisions
Cited in
Solid Waste Facility Classification: Tiered Regulatory Framework

44-1304.01. Storage, disposal, discard or abandonment of used motor vehicle tires; violation; classification; exception

A. It is unlawful to store one hundred or more used motor vehicle tires outdoors as follows:

1. In any fashion that exceeds twenty feet in height.
2. In a pile that is more than one hundred fifty feet from a twenty foot wide access route that allows fire control apparatus to approach the pile. Access routes between and around tire piles shall be at least twenty feet wide and maintained free of accumulations of rubbish, equipment or other materials. Access routes shall be spaced so that a maximum grid system unit of fifty feet by one hundred fifty feet is maintained.
3. Within three feet of any property line.
4. In any fashion that exceeds six feet in height if the used tires are stored between three and ten feet of any property line.
5. Within fifty feet of any area in which smoking of tobacco or any other substance by persons is permitted. "No smoking" signs shall be posted in suitable and conspicuous locations.
6. At any area in which the used motor vehicle tires are stored and in which electrical wiring, fixtures or appliances do not comply with the national electrical code.
7. Without placing class "2A-10BC" type fire extinguishers at well marked points throughout the storage area so that the travel distance from any point in the storage area to a fire extinguisher is not more than seventy-five feet.

B. A person who knowingly discards or abandons five hundred or more motor vehicle tires, discards or abandons any motor vehicle tires for commercial purposes except as provided in section 44-1304, or otherwise knowingly performs any act prohibited by subsection A of this section involving five hundred or more motor vehicle tires is guilty of a class 5 felony.

C. The attorney general may enforce this section.

D. As used in this section "used motor vehicle tires" does not include tires that have been recapped and have not yet been put back into service.

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
2. "Administrator" means the administrator of the United States environmental protection agency.
3. "Closed solid waste facility" means any of the following:
 - (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.
 - (b) A public solid waste landfill that meets any of the following criteria:
 - (i) Ceased receiving solid waste prior to July 1, 1983.
 - (ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.
 - (iii) Received approval for closure from the department.
 - (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
6. "County" means:
 - (a) The board of supervisors in the context of the exercise of powers or duties.
 - (b) The unincorporated areas in the context of area of jurisdiction.
7. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.
8. "Discharge" has the same meaning prescribed in section 49-201.
9. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.
10. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.
11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.
12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.

13. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

14. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.

15. "Inert material":

(a) Means material that satisfies all of the following conditions:

(i) Is not flammable.

(ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 20 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete, but does not include special waste, hazardous waste, glass or other metal.

16. "Land disposal" means placement of solid waste in or on land.

17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and no more than ten per cent by volume of vegetative waste.

18. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

19. "Medical waste" means any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.

20. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.

21. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.

22. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

23. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

24. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

25. "Public solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

26. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.

27. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

28. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

29. "Solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated prior to disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site prior to disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair provided the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five per cent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

30. "Solid waste landfill" means a facility, area of land or excavation in which solid wastes are placed for permanent disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.

31. "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

32. "Solid waste management plan" means the plan which is adopted pursuant to section 49-721 and which provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

33. "Storage" means the holding of solid waste.

34. "Transfer facility" means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste. Transfer facility includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

35. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

36. "Vegetative waste" means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Vegetative waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

37. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

38. "Waste tire" does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

- (a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.
- (b) A tire that is removed from a motor vehicle and is retained for further use.
- (c) A tire that has been chopped or shredded.

39. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

49-701.01. Definition of solid waste; exemptions

A. "Solid waste" means any garbage, trash, rubbish, waste tire, refuse, sludge from a waste treatment plant, water supply treatment plant or pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material.

B. The following are exempt from the definition of solid waste:

1. Hazardous waste regulated pursuant to chapter 5 of this title.
2. Waste that contains radioactive materials subject to the atomic energy act of 1954 (42 United States Code sections 2011 through 2297, 68 Stat. 919) or title 30, chapter 4.
3. Any discharge from a facility regulated pursuant to chapter 2, article 3 of this title.
4. Any discharge regulated pursuant to section 402 or 404 of the clean water act (33 United States Code sections 1342 and 1344).
5. Domestic sewage.
6. Discharges into a publicly or privately owned treatment works including the treatment works and the sewer collection system.
7. Irrigation waters.
8. Irrigation return flows.
9. Reclaimed wastewater from wastewater reuse facilities.

10. Leachate resulting from the direct natural infiltration of precipitation through undisturbed regolith or bedrock, if pollutants are not added by man.

11. Storm water.

12. Substances and materials that remain on site as specifically approved in a work plan or other approval by the department in the course of remedial or corrective actions undertaken pursuant to any of the following:

(a) Chapter 2, articles 3 and 5 of this title.

(b) Chapters 5 and 6 of this title.

(c) The comprehensive environmental response, compensation, and liability act of 1980 (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9675).

(d) The federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1387).

(e) The resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

13. Water used in gardening, lawn care, landscape maintenance and related activities.

14. Discharges from ponds used for watering livestock and wildlife.

15. Landscaping rubble used to reclaim land.

16. Mining industry off-road waste tires that are larger than three feet in outside diameter and that are buried at the site and rock, leachate material, tailing and slag that are produced and maintained at the site of the mining or metallurgical operation.

17. Inert material.

18. Effluent as defined in section 45-101.

19. Return flows from irrigated agriculture.

20. Materials generated on site that are processed or reused on site if the following conditions are met:

(a) On-site processing or reuse of the materials is technically feasible.

(b) At least seventy-five per cent by weight or volume of the materials that are accumulated on site for processing or reuse each year are processed or reused in that same year.

(c) Materials that are accumulated on site for processing or reuse are managed in a manner that:

(i) Controls wind dispersion and other surface dispersion of the materials so that the materials do not create a public nuisance or pose an imminent and substantial endangerment to public health or the environment. Visible materials that are dispersed beyond the boundaries of the site shall be collected on a regular basis by the operator of the site.

(ii) Does not discharge hazardous substances as defined in section 49-281 to surface water, groundwater or subsurface soils in a manner that creates a public nuisance or poses an imminent and substantial endangerment to public health or the environment.

(iii) Controls vector breeding and fire hazards.

(iv) Controls public access to the materials by the use of reasonable measures.

C. Any person may petition the director to exempt a substance as solid waste by submitting a written request to the director. The request may be for a statewide or site-specific exemption. Within ninety days after receipt of a written request, the director shall determine whether to exempt the substance. The director's determination shall be based on a demonstration that the substance is unlikely to cause or substantially contribute to a threat to the public health or the environment. The procedure is as follows:

1. Within thirty days after the director's determination to add a substance on a site-specific basis, a notice of that determination shall be published in the Arizona administrative register. A site-specific determination is effective on the date of the director's determination.

2. Within thirty days after the director's determination to add a substance on a statewide basis, the director shall initiate rule making to add the substance to the list of exemptions. This rule making is exempt from the requirements of title 41, chapter 6, except for the requirements regarding public notice. The effective date for the final rule is the effective date for the exemption.

D. Nothing in this section shall affect the department's authority to require abatement of any environmental nuisance pursuant to chapter 1, article 3 of this title.

49-701.02. Exemptions from definition of solid waste; soils; seller's duty to disclose

A. The following are exempt from the definition of solid waste:

1. On-site excavated soils that meet, at the on-site location where the soils are to be deposited, applicable predetermined remediation levels adopted by the department pursuant to chapter 1, article 4 of this title and applicable groundwater protection levels allowed pursuant to the leachability guidance policy filed with the secretary of state on March 5, 1998, pursuant to section 41-1091. If the soils exceed the predetermined residential remediation levels, the following conditions shall be met:

(a) The owner of the property upon which the soils are to be deposited shall file a written notice with the director, for placement in the repository established pursuant to section 49-152 which includes the name of the property owner, the street address and legal description of the property and the legal description of the area on which the excavated soils which exceed predetermined residential remediation levels are placed.

(b) If the excavated soils are removed to noncontiguous property owned or operated by the same person, the owner shall notify the department at least seventy-two hours prior to the intended removal.

2. On-site excavated soils that meet, at the on-site location where the soils are to be deposited, applicable site specific remediation levels allowed pursuant to chapter 1, article 4 of this title and applicable groundwater protection levels allowed pursuant to the leachability guidance policy filed with the secretary of state on March 5, 1998, pursuant to section 41-1091, provided the following conditions are met:

(a) The department first approves the use of such levels for the location where the soils are to be deposited. Any person who requests approval of an action pursuant to this paragraph shall reimburse the department for reasonable costs to review the proposed action.

(b) The owner of the property upon which the soils are to be deposited shall file a written notice with the director, for placement in the repository established pursuant to section 49-152 which includes the name of the property owner, the street address and legal description of the property and the legal description of the area on which the excavated soils which exceed remediation standards for residential exposure assumptions are placed.

3. Excavated soils that are reused at the site of excavation and that meet applicable background remediation levels allowed pursuant to chapter 1, article 4 of this title.

4. Nonexcavated soils.

5. Soils that are removed off site and that meet all predetermined residential remediation standards adopted by the department pursuant to chapter 1, article 4 of this title if the placement of soils at the off-site location meets all the requirements of the soil remediation standards adopted by the department pursuant to chapter 1, article 4 of this title.

B. An owner of property who has actual knowledge that the property has been used for the disposal of excavated soils which do not meet predetermined residential soil remediation levels or remediation standards for residential exposure assumptions adopted by the department pursuant to chapter 1, article 4 of this title shall, prior to transferring ownership of the property, give written notice of the disposal of the excavated soils that do not meet predetermined residential soil remediation levels or remediation standards for residential exposure assumptions to the purchaser. Actions brought pursuant to this subsection for failure of the seller to provide such written notice to the purchaser shall proceed as other civil actions.

49-761. Rule making authority for solid waste facilities; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule promulgated pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with the provisions of section 49-762.08, subsection B, subsection C, paragraphs 1 and 2, and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with

40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules in lieu of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

- I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:
 - (a) Corporate financial test.
 - (b) Local government financial test.
 - (c) Corporate guarantee test.
 - (d) Local government guarantee test.
 - (e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.
9. Multiple financial assurance mechanisms.
10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

49-761. Rule making authority for solid waste facilities; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release,

as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule promulgated pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with the provisions of section 49-762.08, subsection B, subsection C, paragraphs 1 and 2, and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of

the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules in lieu of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises, containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:
 - (a) Corporate financial test.
 - (b) Local government financial test.
 - (c) Corporate guarantee test.

(d) Local government guarantee test.

(e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.

9. Multiple financial assurance mechanisms.

10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

49-762. Facilities requiring solid waste facility plans

The owner or operator of the following solid waste facilities shall obtain approval of a solid waste facility plan in accordance with sections 49-762.03 and 49-762.04:

1. Solid waste land disposal facilities.
2. Biosolids processing facilities.
3. Medical waste facilities.
4. Special waste facilities.
5. Municipal solid waste landfills.
6. Commercial or government-owned household waste composting facilities.

49-762.01. Facilities requiring self-certification

The owner or operator of all solid waste facilities that are not listed in either section 49-762 or 49-762.02 shall comply with self-certification procedures prescribed by section 49-762.05. A waste tire facility shall also comply with self-certification procedures prescribed by section 49-762.05.

49-762.02. Facilities subject to best management practices; rules

The following solid waste facilities are subject to best management practices adopted in accordance with section 49-761, subsection H:

1. Transfer facilities that have a daily solid waste throughput of one hundred eighty cubic yards or less.
2. Recycling facilities that are located off site, that are used for the collection of recyclable material, that have a storage capacity of one hundred eighty cubic yards or less and that store the recyclable material for less than ninety days.

3. Recycling facilities that are located on site and that are used solely for the collection and storage of recyclable material for less than one hundred eighty days.
4. Closed loop recycling facilities that are located at the site of waste generation.
5. A site at which more than five hundred and fewer than five thousand waste tires are stored on any day.
6. A solid waste facility where only asbestos-containing waste material from manufactured products are stored, processed, treated or disposed. The best management practices for these facilities that shall apply are as follows:
 - (a) For solid waste facilities handling asbestos-containing waste materials that are regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:
 - (i) The national emission standards for hazardous air pollutants that are incorporated by reference in the rules adopted pursuant to chapter 3 of this title.
 - (ii) For solid waste land disposal facilities that are not municipal solid waste landfills, 40 Code of Federal Regulations part 257.
 - (iii) For solid waste land disposal facilities, financial assurance pursuant to the requirements and time frames of section 49-770.
 - (iv) Solid waste facility notification pursuant to section 49-762.05, subsection B, paragraph 5.
 - (v) Compliance with local zoning laws or section 49-767, if applicable.
 - (b) For solid waste facilities handling asbestos-containing waste materials that are not regulated under the national emission standards for hazardous air pollutants in 40 Code of Federal Regulations part 61, subpart M:
 - (i) Compliance with section 49-762.07.
 - (ii) Compliance with local zoning laws or section 49-767, if applicable.
7. Any other solid waste facility that the director determines by rule should be subject to best management practices.

49-763. Inspections

- A. The department may conduct such inspections of solid waste facilities and sites that store, treat or process recyclable solid waste as are necessary. The department shall give the management agency or the owner or the operator of the facility the opportunity to have its representative accompany the inspector. Within forty-five days after the date of the inspection, the department shall provide to the facility owner or operator a copy of any inspection report produced as a result of an inspection of that facility that occurs as prescribed by this section.
- B. Until the department adopts rules pursuant to section 49-761 for a particular type of solid waste facility, solid waste facilities and sites that store, treat or process recyclable solid waste shall be designed and operated as prescribed by section 49-762.07, subsection F. The department's right to inspect facilities operating pursuant to this subsection is limited to ensuring that the facility is in compliance with section 49-762.07, subsection F.

